



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,381	01/02/2001	Eddy Van Beek	4532670/44892	1681

7590 08/06/2004

Kent A. Herink, Esq.  
Davis, Brown, Koehn, Shors & Roberts, P.C.  
The Financial Center  
666 Walnut Street, Suite 2500  
Des Moines, IA 50309-3993

EXAMINER

MARX, IRENE

ART UNIT	PAPER NUMBER
----------	--------------

1651

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/753,381	<b>Applicant(s)</b> BEEK ET AL.	
	<b>Examiner</b> Irene Marx	<b>Art Unit</b> 1651	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1651

The amendment filed 7/19/04 is acknowledged. Claims 1-7 and 10-13 are being considered on the merits.

Claims 8-9 are withdrawn from consideration as directed to a non-elected invention

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

No basis or support is found in the present specification for:

1) the recitation of "lecithins that have been enzymatically enriched in the amounts of lysophospholipids to contain at least 5% by weight of lysophospholipids to the amount of lysophospholipids plus phospholipids."

Applicant has indicated that support is found at bridging paragraph between pages 4 and 5, which pertains specifically to two unidentified products designated "lysoprin" and "Bolec" and in the footnotes to Table 1 and Table 2. However, mixing and matching the disclosure at these locations is not seen to support the recitation "lecithins that have been enzymatically enriched in the amounts of lysophospholipids to contain at least 5% by weight of lysophospholipids to the amount of lysophospholipids plus phospholipids." The insertion of this limitation is a new concept because it neither has literal support in the as-filed specification by way of generic disclosure, nor are there specific examples of the newly limited genus which would show possession of the concept of the use of "lecithins that have been enzymatically enriched in the amounts of lysophospholipids to contain at least 5% by weight of lysophospholipids to the amount of lysophospholipids plus phospholipids." In the examples, applicants use specific compositions and not compositions containing unlimited amounts of lysophospholipids as now recited in the phrase "at least". It is noted that Lysoprin is disclosed as being "enriched" in lysophosphatidylcholine, not in any "lysophospholipid". Bolec MT is

Art Unit: 1651

disclosed as containing only lysophosphatidic acid and lysophosphatidylthethanolamine. This is not sufficient support for the new genus "lecithins that have been enzymatically enriched in the amounts of lysophospholipids to contain at least 5% by weight of lysophospholipids to the amount of lysophospholipids plus phospholipids".

This is a matter of written description, not a question of what one of skill in the art would or would not have known. The material within the four corners of the as-filed specification must lead to the generic concept. If it does not, the material is new matter. Declarations and new references cannot demonstrate possession of a concept after the fact. Thus, the insertion of "lecithins that have been enzymatically enriched in the amounts of lysophospholipids to contain at least 5% by weight of lysophospholipids to the amount of lysophospholipids plus phospholipids" is considered to be the insertion of new matter for the above reasons.

2) the results claimed at claims 10 and 13.

Applicants have indicated that support is to be found for claim 10 in Table 2. Yet the results of Table 2 pertain to a specific ~~preparations~~ surfactant preparations and enzymes and these results cannot be extrapolated to preparations as claimed in claim 1, comprising "lecithins that have been enzymatically enriched in the amounts of lysophospholipids to contain at least 5% by weight of lysophospholipids to the amount of lysophospholipids plus phospholipids". Basis or support for this material is lacking in the instant specification.

Similarly, the basis and support for the limitations in claim 13 regarding the reduction of exogenous enzyme from 0-50% without reduction in degradation of neutral detergent fiber is not found in the instant specification.

Please see *Gentry Gallery v. Berkline* 45 U.S.P.Q.2d 1498 for a discussion related to broadening the claimed invention without support in the as-filed specification. Please see *PurduePharma v. Faulding* 56 U.S.P.Q.2d 1481 for a discussion related to a failure to describe a claimed generic concept in the narrative portion of the specification, but rather basing support on limitations in examples.

The art rejections are withdrawn in view of applicant's amendments. The rejections will be reinstated as appropriate upon removal of the new matter introduced by the instant amendment.

Art Unit: 1651

No claim is allowed.

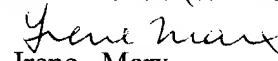
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Irene Marx  
Primary Examiner  
Art Unit 1651